SPC Guiding Case No. 212: Case of Liu [X]gui for Illegal Mining (Criminal Case with Incidental Civil Public Interest Litigation)

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Unofficial English translation prepared for reference only. The official Chinese text prevails.

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Keywords

Criminal / criminal case with incidental civil public interest litigation / illegal mining / illegal sand mining / centralized jurisdiction across administrative divisions / ecological environment damage compensation

Holding

1. A criminal case of illegal sand mining across administrative divisions may be subject to the jurisdiction of a people's court at the place where the illegal mining act was committed, the place of departure, transit, or destination of the transportation of the mineral products, or other places related to the criminal act.

2. For a joint crime of illegal sand mining integrating mining and sale, the court with jurisdiction shall be determined in accordance with the principles of facilitating the ascertainment of the criminal facts and facilitating ecological environment restoration. Where the crime of one person, or the crime at one stage in the joint crime, falls within the jurisdiction of a court, the criminal case of illegal sand mining integrating mining and sale may be tried by that court.

3. Where illegal sand mining causes damage to the ecological environment of a river basin, and the procuratorial organ initiates an incidental civil public interest lawsuit in the criminal case requesting that the defendant bear ecological environment restoration liability, compensate for losses, and pay relevant expenses, the people's court shall uphold such request in accordance with law.

Basic Facts

On September 5, 2021, defendant Liu [X]gui (residing in Wuxue City, Hubei Province) leased the transport vessel E Yinhe No. 518, which he owned, to defendant Liu [X] in a separate case (already sentenced, residing in Xunyang District, Jiujiang City, Jiangxi Province). The two then agreed to jointly steal river sand from the Yangtze River. Before the sand mining, Liu [X] conspired in advance with defendant He [X]dong in a separate case (already sentenced, residing in Chaisang District, Jiujiang City, Jiangxi Province), under which He [X]dong would purchase the river sand stolen by Liu [X] at a low price.

From September 10 to September 26, 2021, defendant Liu [X]gui, on three occasions, joined defendant Liu [X], Xiong [X], and Yang [X] in the separate case (all already sentenced) in stealing approximately 4,500 tons of river sand from the Henghekou waters of the Huangmei section of the Yangtze River in Hubei Province, which was then transported to a wharf in Chaisang District, Jiujiang City, Jiangxi Province, and sold to He [X]dong, who then mixed machine-made sand into the river sand and sold it externally. During the sand mining, Xiong [X], knowing the above circumstances, still provided help such as driving a vehicle for Liu [X], participated in the illegal sand mining activities together, and obtained illegal profits of approximately RMB 15,000 from it. Yang [X] was hired by Liu [X] to supervise the unloading of sand on the transport vessel E Yinhe No. 518, and obtained illegal profits of more than RMB 3,000.

At around midnight on September 30, 2021, after receiving a report from the public, the Jiujiang police station of the Waterborne Branch of the Yangtze River Shipping Public Security Bureau seized the transport vessel E Yinhe No. 518, which was carrying out illegal sand mining operations, in the Henghekou waters of the Huangmei section of the Yangtze River. Upon weighing, the transport vessel E Yinhe No. 518 was

loaded with 1,443.09 tons of illegally mined river sand. According to the Notice of the Hubei Provincial People's Government on Strengthening the Administration of River Channel Sand Mining, the closed sand mining period for the mainstream section of the middle reaches of the Yangtze River in Hubei Province was set from June 1 to September 30, as well as when the water level of the corresponding river section exceeded the warning level. The location of the illegal sand mining in this case, the Henghekou waters of the Huangmei section of the Yangtze River, was located in the Xinzhou waters of Hubei Province in the mainstream of the middle reaches of the Yangtze River.

Upon determination by the Jiujiang Municipal Development and Reform Commission of Jiangxi Province, the market transaction price of the illegally mined river sand was RMB 80 per ton. Defendant Liu [X]gui, together with Liu [X], Xiong [X], He [X]dong, and Yang [X], illegally mined 5,943.09 tons of river sand with a value of RMB 475,447.2. Upon appraisal, the impact of the illegal sand mining of the Yangtze River by Liu [X]gui, Liu [X], and others on the ecological environment of the illegal sand mining area was divided into damage to water environment quality, damage to riverbed structure, damage to water conservation, and damage to aquatic biological resources. Among them, the loss of the Yangtze River's ecological service functions caused was RMB 35,823.41, and the restoration expenses required for the damage to the Yangtze River ecological environment were RMB 26,767.48, totaling RMB 62,590.89.

It was further found that Liu [X], Xiong [X], He [X]dong, and Yang [X] had been previously sentenced by the Ruichang City People's Court of Jiangxi Province for the crime of illegal mining. Defendant Liu [X]gui was arrested and brought to justice on June 8, 2022.

The Jiujiang Intermediate People's Court designated the Ruichang City People's Court of Jiangxi Province to try this case. Upon announcement by the Ruichang City People's Procuratorate of Jiangxi Province in accordance with law, no organ prescribed by law or relevant organization initiated a civil public interest lawsuit after the announcement period expired. The Ruichang City People's Procuratorate accordingly initiated a criminal case with incidental civil public interest litigation before the Ruichang City People's Court in accordance with law.

Judgment

On December 22, 2022, the Ruichang City People's Court of Jiangxi Province rendered the judgment in the criminal case with incidental civil public interest litigation (2022) Gan 0481 Xing Chu No. 304, holding that defendant Liu [X]gui committed the crime of illegal mining and was sentenced to fixed-term imprisonment of three years and fined RMB 110,000; ordering defendant Liu [X]gui, within ten days after the judgment took effect, to jointly return, with Liu [X], Xiong [X], He [X]dong, and others, the state mineral resource loss of RMB 135,000 (after deducting the amounts compensated by the other defendants); the RMB 50,000 of state mineral resource loss already returned by defendant Liu [X]gui shall be turned over to the state treasury; the defendant in the incidental civil public interest litigation, Liu [X]gui, shall, within ten days after the judgment took effect, jointly and severally with Liu [X], Xiong [X], Yang [X], and He [X]dong compensate for the loss of the Yangtze River's ecological service functions caused by the illegal sand mining of RMB 35,823.41 and the restoration expenses for the damage to the Yangtze River ecological environment of RMB 26,767.48, totaling RMB 62,590.89; and the defendant in the incidental civil public interest litigation, Liu [X]gui, shall, within ten days after the judgment took effect, publish an announcement in municipal-level news media of Jiujiang City to apologize to the public. After the judgment was pronounced, there was no appeal or protest, and the judgment became legally effective.

Reasoning

The court's effective judgment held that defendant Liu [X]gui, together with Liu [X] and others, in violation of the provisions of the Mineral Resources Law, without obtaining a mining permit, and through prior conspiracy, jointly illegally mined river sand from the Yangtze River channel during the closed sand mining period, with a value of RMB 475,447.2 and particularly serious circumstances, and should be held criminally

liable for the crime of illegal mining, constituting a joint crime. The charge alleged by the prosecutorial organ was established.

Regarding the issue of jurisdiction, upon investigation, the place where defendant Liu [X]gui's criminal acts were committed and his place of residence were both outside Jiujiang City, Jiangxi Province, but the acts of his co-offenders in the joint crime occurred within the jurisdiction of Jiujiang City, and the co-offenders had already been previously sentenced by the Ruichang City People's Court of Jiangxi Province. Where the criminal act of one person, or the crime at one stage in the joint crime, falls within the jurisdiction of a court, the criminal case of sand mining integrating mining and sale that constitutes a joint crime may be tried by that court. Considering the systematic destructiveness of illegal sand mining in practice, and based on the principles of facilitating the ascertainment of the criminal facts and facilitating ecological environment restoration, the Jiujiang Intermediate People's Court designated this case to be tried by the Ruichang City People's Court, which complied with the law.

Defendant Liu [X]gui directly arranged and carried out the sand mining acts and played a principal role in the joint crime. Liu [X]gui truthfully confessed his criminal facts during the trial, which constituted confession, and could be given mitigated punishment in accordance with law. However, because he had previously been subjected to criminal punishment for illegal mining and now committed the crime of illegal mining again, he was given aggravated punishment as appropriate. Liu [X]gui partially returned the state mineral resource loss, and was given mitigated punishment as appropriate. The criminal acts of Liu [X]gui and others in illegally mining river sand from the Yangtze River caused state mineral resource losses, which should be jointly returned. After deducting the amounts already returned by the co-offenders and the amount already returned by Liu [X]gui, Liu [X]gui still needed to return the mineral resource loss of RMB 135,000.

At the same time, the illegal mining acts also damaged the ecological environment of the Yangtze River waters and harmed the public interest, and the corresponding civil tort liability should be borne. Lucid waters and lush mountains are invaluable assets, and the economic and social development of the Yangtze River basin should adhere to the principle of giving priority to ecology and green development, and of jointly carrying out great protection while refraining from large-scale development. The defendant in the incidental civil public interest litigation, Liu [X]gui, should jointly with defendants Liu [X], Xiong [X], He [X]dong, Yang [X], and others in the separate case bear the loss of ecological functions and the ecological restoration expenses caused by the illegal mining, and bear joint and several compensation liability. The claim of the plaintiff in the incidental civil public interest litigation requiring the above defendants to compensate for the relevant loss of the Yangtze River's ecological service functions and ecological restoration expenses complied with the law and was upheld. The claim of the plaintiff in the incidental civil public interest litigation requiring the above defendants to publicly apologize in municipal-level news media of Jiujiang City complied with the law and was upheld.

Relevant Legal Provisions

Articles 28 and 93 of the Yangtze River Protection Law of the People's Republic of China.

Article 25 of the Criminal Procedure Law of the People's Republic of China.

Article 2 of the Interpretation of the Supreme People's Court on the Application of the Criminal Procedure Law of the People's Republic of China.

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